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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/553,020	<b>Applicant(s)</b> KRAMER, ROBERT	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The response is considered the 11-20-09 amendment. Such amendment is accepted, however; such amendment is still not compliant with 37 CFR 1.121, i.e. not all the changes made to the abstract as filed were shown to arrive at the 11-20-09 language. The next response, if any, must provide an abstract in compliance.

### ***Specification***

#### ***Description***

2. The abstract of the disclosure is still objected to because implied, i.e. “according to the invention”, terminology should be avoided. Note also the second to last line and fourth line with regard to the discussion in paragraph 1 supra. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: The various sections of the specification, see 37 CFR 1.77(b), should be in the proper order, i.e. the Detailed Description Section includes the description of the drawings rather the latter preceding the former. Note also 608.01(d) and 1302 with regard to the Summary of the Invention section and the invention of the claims as now amended, e.g. where are the methods as now amended set forth?

Appropriate correction is required.

***Claim Objections***

4. Claims 7-9 are objected to because of the following informalities: In claim 7, line 2, “body-and” should be --body and--. On the last line of claim 9, after “tampon”, should --body-- be inserted? Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, a positive antecedent basis for “the withdrawal tape”, line 2, should still be defined. Also, the folding step of claim 11 is indefinite in that it is still incomplete. Therefore, in claim 12, a positive antecedent basis for lines 2-3, i.e. “is folded back...band”, should be set forth.

***Claim Language Interpretation***

6. Claims 4-9 are still product by process claims, i.e. see MPEP 2113, i.e. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).” Therefore, the end product of claim 4 is considered to require the structure of claim 1 having the

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claimed capability, claim 5 is considered to require a half loop, e.g. a slip knot, and claim 6, is considered to require another knot, see discussion also infra, claim 7 is considered to require a tampon body and a withdrawal tape which is fastened on the tampon body, has a length, and has at least one releasable fold arranged at least partly within the tampon body retained between adjacent portions of the tampon body, claim 8 is considered to require the body of claim 7 being a rolled and compressed tampon body and claim 9 is considered to require the structure of claim 7 having the claimed capability. Due to the lack of clarity discussed supra the folding step of claim 11 is interpreted to require folding of the tape onto a portion of the band. It is noted that the terminology “in particular for feminine hygiene” on line 1 and 3, respectively, of claims 1 and 7 is not deemed to further limit the terminology “Tampon”, i.e. merely a preference. The terminology “effective length” is as set forth on page 3, first full paragraph, last sentence thereof. With regard to the terminology “tape”, see page 1, second full paragraph as originally filed.

### ***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al ‘984 as evidenced by Dibben et al ‘746, McConnell ‘750, and Van Dyke ‘545.

Claim 1: See ‘984, at col. 3, lines 56-59, the abstract, e.g. “crocheted”, col. 1, lines 4-11, 42-43 and 60-61, col. 2, lines 1-4, 9-14, 35-36 and 47 et seq, and col. 3, lines 37-41, i.e. see Claim Language Interpretation section supra, hereinafter referred to as CLI, ‘984 teaches a tampon comprising a body and a tape, i.e. a string, having a length, a first end connected to the

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body, a second end, e.g. the free end or the crocheted portion, see *infra*, having a knot, and the tape being crocheted, i.e. a series of loops. The claim is considered to further require a loop which reduces the “effective length”, see CLI, of the tape, a free end which extends from the knot and a loop which can be released by pulling the free end in order to increase the “effective length” of the tape, i.e. has the function, capability or property of being releasable. However, a crochet/lock stitch or loop has a lock/knot at its base from which the loop ends, i.e. the free ends, extend, and is releasable/may unravel from such lock/knot, e.g. by loosening/pulling the free ends, i.e. a slip knot/stitch increasing the length of the string/tape, as evidenced by ‘746 at Figures 3a-f, and col. 1, line 14, ‘750 at Figure 1, and the sentence bridging cols. 1-2, and ‘545 at Figure 4, and col. 2, lines 4-9. Thus, at the very least, the crocheted string of ‘984 includes the claimed structure as best understood. Therefore, there is sufficient factual evidence that such same structure inherently also includes the same function, capability and property as claimed, i.e. releasable, see MPEP 2112.01. It is noted that the yarns which comprise the tape of ‘984 have an initial length before use and crocheting of such reduces such length.

Claim 4: See the CLI, i.e. claim 4 is considered to require the structure of claim 1 having the capability of the claim, i.e. does not release by virtue of the loop being pulled, and the discussion of claim 1, i.e. the prior art teaches a crochet/lock stitch, i.e. teaches/is evidenced that such stitch is tightened by pulling loop. Therefore, there is sufficient factual evidence that such same structure inherently also includes the same function, capability and property as claimed, i.e. not releasable, see MPEP 2112.01.

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Claim 5: See CLI, i.e. the claim is considered to require a half loop. See the discussion of claim 1 supra, and Figures 1-6 of the instant application, i.e. as best understood, a crochet/lock stitch is a “half loop” like that shown in instant Figures 1-6. See also discussion of claim 6 infra.

Claim 6: See CLI, i.e. claim 6 requires a second knot. See discussion of claim 1 and that the string/tape includes a plurality of crochet/lock stitches or loops having locks/knots at their bases.

9. Claims 7-9 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Etz ‘912.

Claim 7: See ‘912 at Figures 7, 10, and 12-17, and col. 6, line 15-col.7, line 4, i.e. see CLI, ‘912 teaches a tampon body 2 and a withdrawal tape 1 which is fastened on the tampon body, has a length, and has at least one releasable fold, see 1 and 68 in Figures 14-17, arranged at least partly within the tampon body retained between adjacent portions of the tampon body. It is noted the length of the tape of ‘912 is changed before or during use, i.e. is releasable such that the “effective length” of the withdrawal tape is increased.

Claim 8: See CLI, i.e. claim 8 is considered to require the body of claim 7 being a rolled and compressed tampon body, see Figures 15-21 and col. 6, lines 40-59.

Claim 9: See CLI, i.e. claim 9 is considered to require the structure of claim 7 having the claimed capability, i.e. at least one fold of the withdrawal tape within the tampon body can be released by virtue of pulling the free end of the withdrawal tape being pulled, in order to increase the effective length of the withdrawal tape outside the tampon, see again Figures 14-17 and col. 6, line 60-67.

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Claims 11-12: See discussion of claims 7-9, especially Figures 7, 10 and 12-17, i.e. '912 teaches producing a tampon by positioning a withdrawal tape around a fabric tampon band such that the withdrawal tape extends transversely to the fabric tampon band and a portion of the withdrawal tape extends laterally beyond the fabric tampon band, e.g. Figures 7-8, folding the portion of the withdrawal tape that extends beyond the fabric tampon band partly thereonto, e.g. Figures 10-12, rolling and pressing the fabric tampon band to form a tampon body with the withdrawal tape fastened therein and to retain the folded portion of the withdrawal tape in the tampon, Figure 13 and 15-17 and col. 6, lines 40-60, and the withdrawal tape is folded onto the fabric tampon band in a direction selected from the group consisting of parallel to, obliquely in relation to, or perpendicularly to the transverse direction of the fabric tampon band, see Figures again.

### ***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani '804 in view of Lochte et al '177 in view of Hinzmann '587.

See '177 at the Figures, esp. 6-11 and paragraphs 39-52, esp. 49, i.e. '117 teaches producing a tampon comprising a tampon body, see, e.g., Figures 10-11, and a withdrawal tape, 13, including the steps of positioning the withdrawal tape 13 around a fabric tampon band, e.g. 30, such that the withdrawal tape extends transversely and laterally beyond the fabric tampon band, see Figures 8-10, and paragraph 49, rolling and pressing the fabric tampon band to form



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the tampon body with the withdrawal tape fastened therein, see Figures 9-10, and knotting the withdrawal tape to form a loop, see paragraph 49, e.g. the tape forms a circle/loop. This claim further requires 1) the knotting be outside the tampon body, i.e. after rolling and pressing whereas the prior art teaches such prior to rolling and pressing, and 2) the loop formed being releasable. With regard to 1), the prior art is silent as to the motivation for such knotting after rolling and pressing as is the instant application. However, see ‘587 at the Figures and, e.g., col. 1, lines 7-54 and col. 2, lines 1-9, i.e. faster and/or more reliable to loop tampon withdrawal strings after formation of tampon body. Therefore to perform the knotting step of ‘177 subsequent to rolling and pressing instead would be obvious to one of ordinary skill in the art in view of the teachings of ‘587 due to the recognition that such would provide faster and/or more reliable, i.e. more economic, production of tampon withdrawal string loops, the desire by ‘177 to produce a loop in the withdrawal string and the desire in any production to be more economic and the lack of disclosure of criticality of such by the instant application. Note also paragraph 71 of ‘177. With regard to 2), in so doing, after performance of the knotting step, the loop formed by the tape due to the knotting is released, see Figures and col. 4, line 40-col. 5, line 29 of ‘587, released/releasable from knotting mechanism. It is noted that the claim does not specify what the loop is released from.

### ***Response to Arguments***

12. Applicant’s remarks have been carefully considered but are deemed either moot in that the issue discussed has not been reraised or deemed not persuasive. Specifically the arguments with regard to the prior art are narrower than the teachings of the prior art. For

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example, '984 specifically teaches a loop configuration, see cited portions, e.g. col. 3, lines 40-42, which is contrary to the arguments at page 12, lines 13-14. Note also, e.g., '746 at the paragraph bridging cols. 3-4. For another example, '912 teaches a wound, i.e. folded, drawstring/tape, see CLI, which is releasable, see, e.g., Figures 14-17.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1, 6 and 9-12.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

February 12, 2010